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76-511

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-511

SIDNEY SALOMON, JR., et al.,
Petitioners,

vs.

CROWN LIFE INSURANCE COMPANY,
Respondent.

and

CROWN LIFE INSURANCE COMPANY,
Respondent,

vs.

SIDNEY SALOMON, JR. & ASSOCIATES, INC., et al.,
Petitioners.

BRIEF

Of Crown Life Insurance Company in Opposition to Granting a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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This petition for a Writ of Certiorari should be denied as there is absolutely no basis alleged for granting the Writ. There are no "special and important reasons therefor" and the petition does not set forth any of the grounds for Certiorari under Rule 19.

THE PROCEEDINGS BELOW

This diversity case stated a claim by Petitioners (sometimes referred to herein as "Salomon") that Crown Life Insurance company ("Crown") tortiously interfered with Salomon's em-

ployees when Crown terminated a St. Louis insurance agency. Crown had terminated the agency under an express provision of a non-exclusive agency contract which gave either party the right to terminate on 30 days notice. Crown, in a separate suit which was consolidated with Petitioners' complaint, sought a right to recover its records, as there was also a provision in the contract giving Crown that right upon termination. Another St. Louis agency whose contract was also terminated by Crown intervened and likewise sought damages.

The case was tried without a jury and the District Court awarded Salomon a judgment based upon Salomon's projected earnings for 20 years under the general agency contract, even though the District Court held that Crown had a lawful right to, and did, terminate the general agency contract on thirty days' notice. That court denied Crown the right to recover its records and denied any recovery to the intervenor. Crown appealed as there was no support for either the liability findings or the damages awarded.

REASONS FOR DENYING THE WRIT

There is no basis for this Court's granting its Writ. No important public question is involved; no conflict among the Circuits is claimed. Indeed Petitioners do not claim that any new rule or legal precedent has been announced by the Court of Appeals. Instead, the three questions presented all deal with the scope of judicial review of a non jury case. The Court of Appeals' opinion stated and followed the correct standards of federal judicial review in such a case. The Petition here deals only with the application of Missouri tort law to this particular case. The Court of Appeals did not depart from recognized principles in deciding this case, and there is no substance to the contentions urged by Petitioners.

I

The Court of Appeals in deciding this appeal expressly recognized the very rules of appellate review cited by Petitioner. In the Opinion the Court said (A-3 of the Petition) that it was guided by those same principles, and in particular that in deciding this case, it viewed the evidence and accepted such reasonable inferences therefrom as tended to support the trial court's conclusions, citing the *Lindsey* case which was adopted by the Petitioners. Again on pp. A-11 and 12 the Court of Appeals in its Opinion discussed the proper scope of appellate review in a case such as this and held specifically that it would not review the case *de novo*, citing *Mears*, another case adopted by Petitioners. In fact, the court cited additional authorities which demonstrate that it adhered meticulously to the proper rules of appellate review, as it said that the complaining party (Crown) had the burden of clearly demonstrating error of the trial court, especially where there are findings based primarily upon demeanor and credibility of the witnesses. The Court of Appeals concluded its initial discussion of the Rules in the context of this case by citing three cases decided by this Court and two prior decisions of the Eighth Circuit supporting its right as an Appellate Court to reach its conclusion (A-12):

> "Nevertheless, our careful analysis of the entire record in light of these standards leaves us with the definite and firm conviction that a mistake has been committed."

After discussing the Missouri law and its application to the evidence the Court concluded, on Page A-22:

> "In summary, after extensive analysis of the entire record before the district court and with full realization that it is our duty on appeal to give great deference to the factual findings of the trial court, we conclude that no cause of action for tortious interference with contractual or business relations under Missouri law was established in the instant case."

II

Petitioners do not allege that the Court of Appeals adopted a new or incorrect rule of Missouri tort law. Rather, the petition concerns the application of the decided cases to the facts involved in this diversity case. The Court of Appeals correctly determined that Petitioners had failed to prove that Crown tortiously interfered with Salomon's employees.

The court correctly discussed the required proof of such a claim under Missouri law. Petitioners do not dispute that the Missouri law requires a plaintiff to establish an absence of justification on the part of the defendant in order to recover. The court carefully examined the entire record, and considered the evidence especially coming from Mr. Salomon himself, his compatriots and the documents and held that Petitioners had not adduced sufficient evidence to support such a claim.

The crucial factual back drop of Crown's termination of the agency was that Petitioners' own evidence showed that Mr. Salomon was spending most of his time managing his hockey team rather than furthering the business interests of the agency. A year prior to the termination, Mr. Salomon entered into a joint venture arrangement with a broker called I.C.I. whereby Salomon abdicated the management of the agency to I.C.I. In less than a year this joint venture arrangement was losing money. Prior to any termination by Crown, a document generated by the president of I.C.I. showed that this agency was dissolved by Salomon and I.C.I. It was also conceded that Salomon, through his secretary, then requested that Crown grant separate agencies to Salomon *and* I.C.I. The joint venture had been run by persons whom I.C.I. terminated when that agency itself was dissolved. These men approached Crown for a new agency. Crown had to make a choice.

The court correctly applied Missouri law and concluded, following an exhaustive analysis of the record, that Petitioners

had wholly failed to prove that Crown acted without justification or had acted with any malice toward Salomon. The decision was unanimous. Petitioners moved for rehearing and for rehearing *en banc* and their motions were properly overruled.

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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